

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
GALVESTON DIVISION

MARK ALLEN, ROBERT E. BAKER,	§
HECTOR BATISTA, KENNETH BEACH,	§
WILLIAM BEHAN, SHONNA M. BELLOW,	§
GARY A. BOATRIGHT, DAVID BRIGGS,	§
JAMES O. CLARK, PRESTON CONN,	§
CLINTON P. COOKE, WILLIAM S. COOLEY,	§
KEVIN COOPER, SEAN COUTORIE,	§
JAY A. CRANFILL, NICHOLAS DE LA ROSA,	§
MICHAEL DE LOS REYES, JOSHUA H. EBY,	§
WILLIAM FATTIG, BRYAN FLETCHER,	§
DAVID A. GODFREY, ROBERT GOMEZ,	§
MARK GRACE, JASON J. GRIMM, TROY	§
HAMILTON, HARMON W. HART, LEE	§
HART, JR., BOBBY C. HON, JR., SHANE	§
HUGHES, DANIEL HULL, WAYNE M.	§
JOHNSON, KYLE JORDON, TINA KRENEK,	§
NICHOLAS KRESTA, MARK A. LEONHARDT,	§
CHARLES LINER, CARLOS LOPEZ, MICHELLE	§
ROSALES MANCIAS, MARK MORGAN,	§
EDWIN NEWTON, CAIDIN PIERCE,	§
LAWRENCE L. PLASEK, CHASITY PORTER,	§
NACHOL RIGSBY, BRIAN RINGLEBEN,	§
MIKE RUSNAK, JAMIL SAIFI, WILLIAM D.	§
SHERER, CHAD M. SMITH, C. J. SOTO,	§
TERRY STENSON, JOHN S. STEVENSON,	§
STEPHEN STRICKHAUSEN, LARRY	§
THOMPSON, JOE TUMBLESON, JR.,	§
RUSSELL J. WARNER, GANESA WARREN,	§
WENDELL WILEY, THOMAS WILLIAMS,	§
 Plaintiffs,	§
 v.	§
 CITY OF TEXAS CITY,	§
 Defendant.	§

CIVIL ACTION NO. \_\_\_\_\_

**ORIGINAL COMPLAINT & JURY DEMAND**

TO THE HONORABLE JUDGE OF THE COURT:

Come now the Plaintiffs and file this Original Complaint complaining of Defendant City of Texas City, Texas. For cause of action, Plaintiffs would respectfully show the Court the following.

**I. NATURE OF ACTION**

1. Plaintiffs bring this action to recover unpaid compensation and other appropriate relief from the Defendant pursuant to the Fair Labor Standards Act (FLSA), 29 U.S.C. §§201 et seq., and TEXAS LOCAL GOVERNMENT CODE §142.0015. Plaintiffs contend that Defendant improperly failed to use the Plaintiffs' "regular rate" of pay, as defined in 29 U.S.C. §207(e), to determine overtime pay, thereby depriving Plaintiffs of overtime compensation to which they were entitled under 29 U.S.C. § 207 and TEXAS LOCAL GOVERNMENT CODE §142.0015. Plaintiffs also contend that Defendant violated the FLSA, TEXAS LOCAL GOVERNMENT CODE §142.0015, and the Plaintiffs' employment contracts when it improperly failed to compensate Plaintiffs for hours spent attending classes necessary to obtain or maintain occupational certifications which Defendant required for the performance of their jobs. Plaintiffs seek declaratory and injunctive relief, back pay for underpayment of wages, an equal amount as liquidated damages, and attorney fees and costs.

**II. JURISDICTION AND VENUE**

2. Jurisdiction over Plaintiffs' federal law claims is conferred on this Court by 28 U.S.C. §1331 and by 29 U.S.C. §216. Supplemental jurisdiction over Plaintiffs' state law claims is conferred by 28 U.S.C. §1337(a).

3. Venue is proper in this Court under 28 U.S.C. § 1331(b).

### III. PARTIES

4. Each of the named Plaintiffs is a fire fighter who is and/or was employed by Defendant in the Texas City Fire Department during the relevant period. Each is or was an "employee" of Defendant as that term is defined in 29 U.S.C. §203(e)(2)(C). Each has consented to the filing of this action as evidenced by their Consents to Sue attached hereto as Exhibit 1.

5. Defendant City of Texas City, Texas is a municipal corporation and a home rule city operating within its geographical boundaries located in Galveston County, Texas. Defendant is a "public agency" as defined by 29 U.S.C. §203(x) and an "employer" as defined in 29 U.S.C. §203(d). Defendant may be served with process by serving its City Secretary, Pamela Lawrence, at her office address at 1801 9<sup>th</sup> Avenue North, Texas City, Texas 77592.

### IV. FACTUAL BACKGROUND

6. For purposes of this action, the "relevant period" is defined as that period commencing four years prior to the date this action was filed and continuing thereafter.

7. During the relevant period, Defendant has been subject to the requirements of the Fair Labor Standards Act, 29 U.S.C. §201 et seq., and TEXAS LOCAL GOVERNMENT CODE §142.0015.

8. During the relevant period, Defendant has been subject to the requirements of the Fire and Police Civil Service Act, TEXAS LOCAL GOVERNMENT CODE Chapter 143 (the "Civil Service Act"). Under the Civil Service Act, all fire fighters in the same classification are required to be paid the same base salary. TEXAS LOCAL GOVERNMENT CODE §143.041(b). In addition, a civil service city can provide pay supplements to its fire fighters which are authorized by TEXAS

LOCAL GOVERNMENT CODE §§143.041(c). Among the authorized pay supplements are certification pay and educational incentive pay if made in accordance with the requirements of TEXAS LOCAL GOVERNMENT CODE §143.044.

9. Throughout the relevant period, the Texas City Fire Fighters Association, also known as Local 1259 of the International Association of Fire Fighters, AFL-CIO-CLC (the "Association"), has been the exclusive bargaining agent for Texas City fire fighters, excluding the Fire Chief, for purposes of collective bargaining under TEXAS LOCAL GOVERNMENT CODE Chapter 174. At times during the relevant period, Defendant has been party to a collective bargaining agreement with the Association.

10. The collective bargaining agreement between the Defendant and the Association in effect between October 31, 2005, and September 30, 2009 (the "2005 Agreement"), contained an Article XII, entitled "OVERTIME PAY", which stated, in part:

Section 1. All hours worked outside a fire fighter's regular schedule shall be paid at the rate of one and one-half times the basic rate of pay. A fire fighter's regular schedule may be changed on twenty-four (24) hours' notice, provided that in the event such schedule change shall result in a fire fighter working in excess of the number of hours in a twenty eight (28) day cycle of his original shift, such excess hours shall be paid at the rate of one and one-half times the basic rate of pay. It is understood and agreed that the Employer will determine and pay any additional overtime compensation required by law, such as the Fair Labor Standards Act and associated Federal Regulations, in accordance with the provisions of such law, subject to the provisions of Article XXVIII of this Agreement; but the Employer's compliance with the Fair Labor Standards Act shall not be subject to arbitration.

Section 2. The fire fighter's basic rate of pay shall be the annual salary divided by 2,600 hours.

Sections 3 and 4 of Article XII dealt with Call-Out Pay and Compensatory Time. Attached to the 2005 Agreement as Appendix A was a "Firefighters Wage Scale" establishing the hourly and monthly wage rates for the various fire fighter classifications.

11. There was no collective bargaining agreement in effect between Defendant and the Association from October 1, 2009 to March 9, 2010.

12. The collective bargaining agreement between the Defendant and Association in effect between March 10, 2010 and September 30, 2010 (the "2010 Agreement"), contains an Article XII, entitled "OVERTIME PAY", which states, in pertinent part:

Section 1. All hours worked outside a fire fighter's regular schedule, in excess of two hundred sixteen (216) in a 27-day work period, shall be paid at the rate of one and one-half times the basic rate of pay. Fire fighters will be paid on a salary basis, and will receive overtime on a half-time basis for scheduled hours worked between 204 and 216 in a 27-day work period. Only hours actually worked will be included in determining whether a fire fighter has worked overtime.

It is understood and agreed that the Employer will determine and pay any additional overtime compensation required by law, such as the Fair Labor Standards Act and associated Federal Regulations, in accordance with the provisions of such law, subject to the provisions of Article XXVIII of this Agreement; but the Employer's compliance with the Fair Labor Standards Act shall not be subject to arbitration. A fire fighter's regular schedule may be changed on twenty-four (24) hours notice, provided that in the event such schedule change shall result in a fire fighter working in excess of 216 hours, such excess hours shall be paid at the rate of one and one-half times the basic rate of pay.

Section 2. The fire fighter's basic rate of pay shall be the annual salary divided by 2,756 hours.

(emphasis in original). Sections 3 and 4 of Article XII again deal with Call-Out Pay and Compensatory Time. Appendix A of the 2010 Agreement is a "FIREFIGHTERS WAGE SCALE" that

establishes the hourly, 27-day work cycle, and annual pay of the various fire fighter classifications.

13. The 2005 Agreement contained an Article IV, entitled "EMPLOYER RIGHTS", that stated, in part:

Except as otherwise specifically provided the management of the City of Texas City shall have a direction of the workforce including, but not limited to:

- . . .
- the right to determine and establish pre-employment employee qualifications, standards, and/or terms and conditions of employment. The right to amend or modify pre-employment qualifications standards, and/or terms and condition of employment prior to completion of first year probationary status. The qualifications, standards, and/or terms and conditions of employment set forth [sic] in the Conditions of Employment Contract in effect at the completion of the one year probationary status shall become permanent. Any future modifications, amendments, or changes shall only be made through the collective bargaining process by mutual consent of the Union and City for that employee.
- . . .

The 2005 Agreement does not itself address what terms and conditions may be included in the so-called Conditions of Employment Contracts.

14. The 2010 Agreement also contains an Article IV, entitled "EMPLOYER RIGHTS", that states, in part:

Except as otherwise specifically provided the management of the City of Texas City shall have a direction of the workforce including, but not limited to:

- . . .
- the right to determine and establish pre-employment employee qualifications, standards, and/or terms and conditions of employment. The right to amend or modify pre-employment qualifications standards, and/or terms and condition of employment prior to completion of first year probationary status. The qualifications, standards, and/or terms and conditions of employment set forth in the Conditions of Employment Contract shall be permanent. **Any future modifications, amendments, or**

changes shall only be made through agreement between the City and the employee.

....

(emphasis in original). Like the 2005 Agreement, the 2010 Agreement does not itself address what terms and conditions may be included in the Conditions of Employment Contracts.

15. Among the supplemental pays authorized by the Civil Service Act is certification pay. *See TEXAS LOCAL GOVERNMENT CODE §§143.041(c) & 143.044.* The 2005 Agreement contained an Article XXIV, entitled "INCENTIVE PROGRAM," that established monthly supplemental pay amounts for fire fighters obtaining the following certifications issued by the Texas Commission on Fire Protection and/or others: Intermediate, Advanced, and Master Fire Fighter; Fire Inspector; and Fire Investigator. Article XXIV also provided monthly supplemental pay amounts for the following Emergency Medical Technician (EMT) certifications issued by the Texas Department of Health: EMT Basic, EMT Intermediate, and EMT Paramedic. Finally, Article XXIV provided a monthly supplemental pay amount for the following certification issued by the Texas Commission on Law Enforcement Officer Standards and Education: peace officer. The 2010 Agreement provided the same or increased monthly supplemental pay amounts for all these same certifications.

16. Among the supplemental pays authorized by the Civil Service Act is educational incentive pay. *See TEXAS LOCAL GOVERNMENT CODE §§143.041(c) & 143.044.* The 2005 Agreement contained an Article XXIV, entitled "INCENTIVE PROGRAM," that established monthly supplemental pay amounts for fire fighters obtaining the following college degrees: Associates, Bachelor's, and Master's Degrees. The 2010 Agreement provided the same monthly supplemental pay amounts for all these same degrees.

17. Throughout the relevant period, the Defendant has utilized the partial overtime exemption for fire fighters provided by 29 U.S.C. §207(k), and has paid fire fighters engaged in suppression duties overtime pay for all hours in excess of 204 worked in a 27-day work cycle. Fire fighters not engaged in suppression duties are paid overtime for hours worked in excess of 40 in each 7-day week.

18. Throughout the relevant period, Defendant has failed to use the Plaintiffs' "regular rate," as that term is defined in 29 U.S.C. §207(e) and relevant regulations promulgated by the U. S. Department of Labor (DOL), to compensate Plaintiffs for overtime hours worked. Instead the Defendant has compensated the Plaintiffs for each overtime hour worked at one and a half times their "basic rate of pay." The City has excluded from its calculation of the Plaintiffs' "basic rate of pay" all supplemental pay amounts received for certifications and educational degrees.

19. Those Plaintiffs who have been hired since 2001 have been required to sign Conditions of Employment Contracts (COECs) in order to secure employment with Defendant as fire fighters. The precise terms of the COEC have changed over the years, and thus the actual conditions of employment vary between those Plaintiffs who have signed COECs. An example of a recently-used COED is attached hereto and incorporated herein as Exhibit 2.

20. Under the terms of the COEC, some Plaintiffs are required, as a condition of initial employment, to obtain EMT certification at the Basic level by the end of their probationary year of employment. As a condition of *continued* employment after the probationary year, the COECs also require the fire fighter to obtain, "within the timeframe specified by the Fire Chief," EMT certification at the Intermediate or Paramedic level. The COEC

also requires the Plaintiff to state that "all continuing education and/or annual training, attended voluntarily on off-duty time, to maintain present certification or to attain a higher level of certification is non-compensable under federal and state law, and that by my signature below acknowledges that I will voluntarily attend such training, as required to maintain my certification or attain a higher level of certification." The requirement to obtain Intermediate or Paramedic certification can be imposed on the fire fighter at any time during his/her entire career with the Defendant. The COEC further requires the Plaintiff to state: "I understand that if I fail to satisfactorily complete the EMT Basic, Intermediate, or Paramedic training and qualify for State Certification or if I fail to maintain any and all required certifications at a level established by the Department, ... I shall be in breach of this agreement and, by my signature below, I agree to automatic resignation and forfeiture of my position with the City of Texas City in this event."

21. The Texas City Fire Chief has in fact required some Plaintiffs to attend EMT Intermediate and Paramedic certification classes on their own time, sometimes years after their initial hire date, and has fired at least two Texas City fire fighters for failing courses necessary to obtain required EMT certifications.

22. As a condition of initial and continued employment, the relevant COEC also requires some Plaintiffs, upon request by the Fire Chief which can be made at any time during the fire fighter's entire career, to obtain and maintain the following certifications issued by the Texas Commission on Fire Protection and/or others: Hazardous Materials, Water Rescue, High Angle and Confined Space, Cardiopulmonary Resuscitation Instructor, Methods of Teaching,

Fire Instructor, Fire Inspector, Fire Investigator, and Arson Investigator.<sup>1</sup> To the extent that such certifications cannot be obtained or maintained during the fire fighter's normal working hours, the COEC requires the fire fighter to attend the initial or continuing education courses on his/her own time without compensation.

23. As a condition of initial and continued employment, the relevant COEC also requires some Plaintiffs to obtain from an accredited college "an Associates [sic] Degree in Fire Protection Technologies, Fire Administration, Business Administration or other degree program which has been pre-approved by and authorized by the Office of the Fire Chief" within six years of employment. The fire fighter must agree that any time spent off-duty to study for or attend any courses to obtain the required degree "is voluntary and is non-compensable." However, as with all other conditions established in the COEC, the fire fighter agrees that his/her failure to comply with the requirements established by the Fire Chief will require automatic resignation and forfeiture of his/her position with Defendant.

24. As a condition of initial and continued employment, some Plaintiffs have agreed in their COECs that they "may be required by the Fire Chief at some time during my service with the Department to obtain a Bachelor's Degree from an Accredited College in a program that has been pre-approved by and authorized by the Office of the Fire Chief." The Fire Chief may also establish a time limit within which the fire fighter "shall obtain the required bachelors degree." Again, the fire fighter must agree that any time spent off-duty to study for or attend any courses to obtain the required degree "is voluntary and is non-compensable." And again, as

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<sup>1</sup> The Arson Investigator certification also requires obtaining Peace Officer certification from the Texas Commission on Law Enforcement Standards and Education. The COEC adds this to the list of certifications the fire fighter can be made to obtain on his/her own time at any time throughout his/her career.

with all other conditions established in the COEC, the fire fighter agrees that his/her failure to comply with the requirements established by the Fire Chief will require automatic resignation and forfeiture of his/her position with Defendant.

25. At all times during the relevant period, the Defendant has failed and refused to compensate those Plaintiffs who have signed a COEC for all hours spent outside regular work hours in studying for and attending classes to obtain certifications required by the Defendant as a condition of the Plaintiffs' continued employment. Defendant continues to fail and refuse to pay the Plaintiffs for time spent in required training necessary to obtain or maintain such certifications.

#### **V. FIRST CAUSE OF ACTION**

26. Paragraphs 1-25 are incorporated herein by reference.

27. By failing to include Plaintiffs' educational pay and certification pay in Plaintiffs' "regular rate" for the purpose of calculating overtime pay, the Defendant has violated and continues to violate Plaintiffs' rights under the FLSA and implementing regulations, including but not limited to 29 U.S.C. §207, to overtime compensation at one and one-half times their regular rate for all hours for which overtime compensation is required.

#### **VI. SECOND CAUSE OF ACTION**

28. Paragraphs 1-27 are incorporated herein by reference.

29. By requiring Plaintiffs, upon pain of job forfeiture, to attend continuing education and/or annual training needed to obtain or maintain occupational qualifications and certifications required by Defendant, without compensating Plaintiffs at their regular or overtime rate for those hours, the Defendant has violated and continues to violate Plaintiffs'

rights under the FLSA and implementing regulations, including but not limited to 29 U.S.C. §206 and 29 C.F.R. §785.27 et seq., to be paid for all hours worked for Defendant.

## **VII. SUPPLEMENTAL STATE LAW CLAIMS**

30. Paragraphs 1-29 are incorporated herein by reference.
31. By failing to include Plaintiffs' educational pay and certification pay in Plaintiffs' pay for the purpose of calculating overtime pay, the Defendant has violated and continues to violate Plaintiffs' rights under TEXAS LOCAL GOVERNMENT CODE §142.0015(e) to be paid for overtime hours at the rate of "1-1/2 times the compensation paid to the fire fighter or member of the fire department for regular hours."
32. By requiring Plaintiffs, upon pain of job forfeiture, to attend continuing education and/or annual training needed to obtain or maintain occupational qualifications and certifications required by Defendant, without compensating Plaintiffs at their regular or overtime rate for those hours, the Defendant has violated and continues to violate Plaintiffs' rights under TEXAS LOCAL GOVERNMENT CODE §142.0015(e), the 2005 Agreement, the 2010 Agreement, and their employment contracts with Defendant.

## **VIII. PRAYER FOR RELIEF**

Wherefore, premises considered, Plaintiffs respectfully request that Defendant be cited to appear and answer herein; and that upon final hearing, the Court grant Plaintiffs relief as follows.

- A. Declare that Defendant has violated the Fair Labor Standards Act, specifically 29 U.S.C. §207, and TEXAS LOCAL GOVERNMENT CODE §142.0015, by failing to include educational

incentive pay and certification pay in the calculation of the Plaintiffs' "regular rate" for purposes of calculating their overtime pay rates.

B. Declare that Defendant has violated the Fair Labor Standards Act, specifically 29 U.S.C. §§206 & 207, TEXAS LOCAL GOVERNMENT CODE §142.0015, the 2005 and 2010 Agreements, and the employment agreements between Plaintiffs and Defendant, by failing to compensate Plaintiffs at their appropriate regular or overtime rate for the time spent attending continuing education and/or annual training while off-duty in order to maintain required occupational qualifications and certifications.

C. Permanently enjoin Defendant from failing to use the Plaintiffs' regular rate of pay, as that term is defined in 29 U.S.C. §207(e), in compensating Plaintiffs for overtime hours worked.

D. Permanently enjoin Defendant from failing and refusing to compensate Plaintiffs for hours spent attending continuing education and/or annual training while off-duty in order to maintain required occupational qualifications and certifications.

E. Order Defendant to pay each Plaintiff back pay equal to the difference between what the Plaintiff would have received for overtime hours worked had the Plaintiff's correct "regular rate" been used to calculate overtime pay, and what the Plaintiff actually was paid for those hours.

F. Order the Defendant to pay each Plaintiff back pay at their regular or overtime rate, as appropriate, for each uncompensated hour spent attending continuing education and/or annual training while off-duty in order to maintain required occupational qualifications and certifications.

D. Order Defendant to pay each Plaintiff liquidated damages in an amount equal to the back pay awarded to that Plaintiff.

E. Order Defendant to pay Plaintiffs' reasonable attorney fees and costs pursuant to 29 U.S.C. §216(b).

F. Order Defendant to pay pre-judgment interest at the highest lawful rate for all amounts awarded against Defendant for which pre-judgment interest is legally available.

G. Order Defendant to pay post-judgment interest at the highest lawful rate for all amounts, including attorney fees, awarded against Defendant.

H. Order all further relief, whether legal, equitable or injunctive, as may be necessitated to effectuate full relief to the Plaintiffs.

Respectfully submitted,

DEATS, DURST, OWEN & LEVY, P.L.L.C.

B. Craig Deats

B. Craig Deats  
TBN: 05703700  
Elaine F. Edwards  
TBN: 24049829  
1204 San Antonio Street, Suite 203  
Austin, Texas 78701  
(512) 474-6200  
FAX (512) 474-7896

Attorneys for Plaintiffs

**JURY DEMAND**

Plaintiffs request a jury trial on all issues so triable.

B. Craig Deats

B. Craig Deats

# **EXHIBIT 1**

# **CONSENTS TO SUE**

By my signature below, I hereby give my consent to Deats, Durst, Owen and Levy, PLLC, to file suit on my behalf under the Fair Labor Standards Act, 29 U.S.C. §201 et seq., and agree to be bound by the terms of the Contract of Employment and Power of Attorney to which this signature sheet is attached. I further agree that I have been provided with a copy of this Contract.

Nicholas De La Rosa  
Signature  
Nicholas De La Rosa  
Printed Name

Kerry Beach  
Signature  
Kerry Beach

Kyle Jordan  
Signature  
Kyle Jordan  
Printed Name

William D. Sherer  
Signature  
William D. Sherer  
Printed Name

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Signature  
ROBERT E. BAKER  
Printed Name

  
Signature  
Mark A. Levy  
Printed Name

  
Signature  
MICHAEL DE LOS REYES  
Printed Name

  
Signature  
David Briggs  
Printed Name

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Shana M. Bellow  
Signature  
Shana M. Bellow  
Printed Name

Sean Couturie  
Signature  
SEAN COUTURIE  
Printed Name

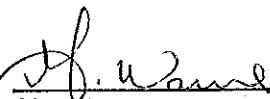
Gary A. Boatright  
Signature  
GARY A. BOATRIGHT  
Printed Name

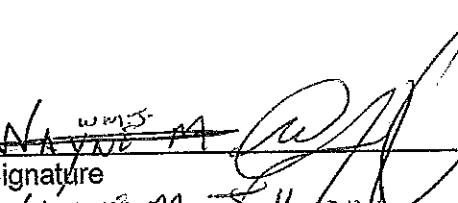
Joe Tumbeson Jr.  
Signature  
JOE TUMBESON JR.  
Printed Name

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Signature  
Share Hughes  
Printed Name

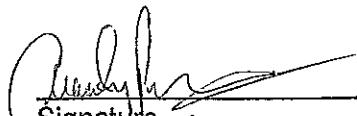
  
Signature  
Brian L. Ringleben  
Printed Name

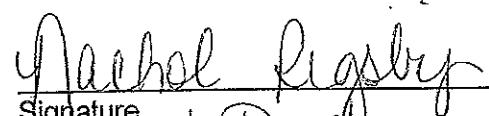
  
Signature  
Ganesa Warren  
Printed Name

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Signature  
~~Wayne M. Safferson~~  
Printed Name

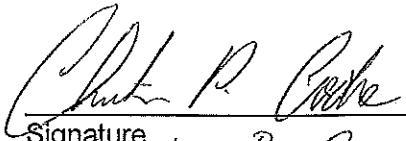
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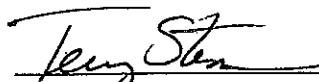
  
\_\_\_\_\_  
Signature  
\_\_\_\_\_  
Lee Hart Jr  
\_\_\_\_\_  
Printed Name

  
\_\_\_\_\_  
Signature  
\_\_\_\_\_  
Christy Porter  
\_\_\_\_\_  
Printed Name

  
\_\_\_\_\_  
Signature  
\_\_\_\_\_  
Nachol Rigsby  
\_\_\_\_\_  
Printed Name

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\_\_\_\_\_  
Signature  
Clinton P. Cooke  
Printed Name

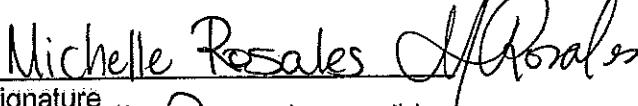
  
\_\_\_\_\_  
Signature  
Terry Stenson  
Printed Name

  
\_\_\_\_\_  
Signature  
Bobby L. Hoy Jr.  
Printed Name

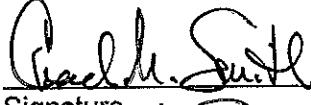
  
\_\_\_\_\_  
Signature  
Stephen Strickhausen  
Printed Name

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Signature  
CAIDIN PIERCE  
Printed Name

  
Signature  
Michelle Rosales  
Printed Name

  
Signature  
Edwin Newton  
Printed Name

  
Signature  
Chad U. Smith  
Printed Name

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Signature  
Hector Batista  
Printed Name



Signature  
Russell J. Warner  
Printed Name



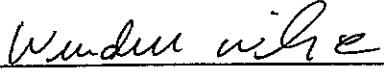
Signature  
Tina Krenek  
Printed Name

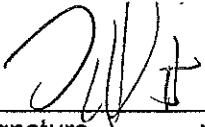


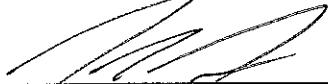
Signature  
Carlos Lopez  
Printed Name

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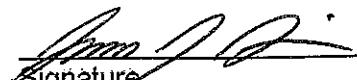
  
Signature  
Stephen Strickhausen  
Printed Name

  
Signature  
Wunder will e  
Printed Name

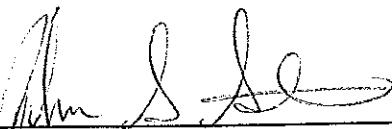
  
Signature  
May Hamilton  
Printed Name

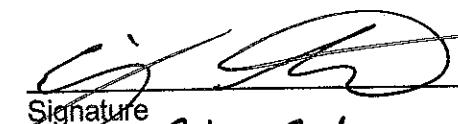
  
Signature  
Jamil Saifi  
Printed Name

By my signature below, I hereby give my consent to Deats, Durst, Owen and Levy, PLLC, to file suit on my behalf under the Fair Labor Standards Act, 29 U.S.C. §201 et seq., and agree to be bound by the terms of the Contract of Employment and Power of Attorney to which this signature sheet is attached. I further agree that I have been provided with a copy of this Contract.

  
Signature  
Jason J. Grimes  
Printed Name

  
Signature  
William Behan  
Printed Name

  
Signature  
John S. Stevenson  
Printed Name

  
Signature  
Cj Soto  
Printed Name

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Prest D Conn  
Signature  
PRIESTON CONN  
Printed Name

Mark A Leonthardt  
Signature  
Mark A Leonthardt  
Printed Name

Charles Linn  
Signature  
Charles Linn  
Printed Name

David A. Godfrey  
Signature  
David A. Godfrey  
Printed Name

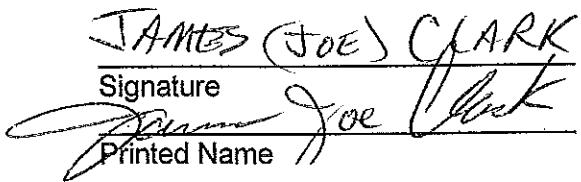
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Signature  
Mark Grace

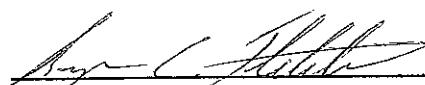
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Signature  
Ally Thompson

Printed Name

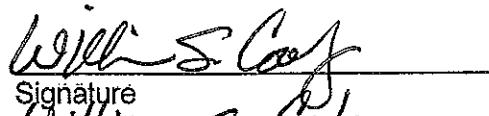
  
Signature  
James (Joe) Clark

Printed Name

  
Signature  
Bryan Fletcher

Printed Name

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Signature  
William S. Cooley  
Printed Name

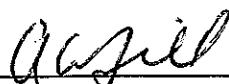
  
Signature  
Harmon L. Hart  
Printed Name

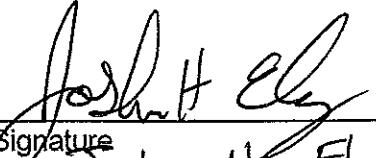
  
Signature  
LAWRENCE L. PLASEK  
Printed Name

  
Signature  
Nicholas Kresta  
Printed Name

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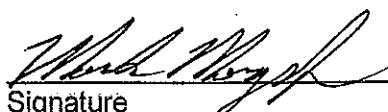
  
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Signature  
William Fattis  
Printed Name

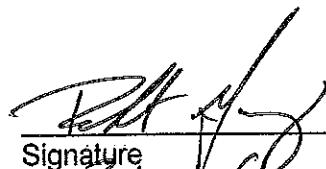
  
\_\_\_\_\_  
Signature  
April G. Cromfill  
Printed Name

  
\_\_\_\_\_  
Signature  
Joshua H. Ely  
Printed Name

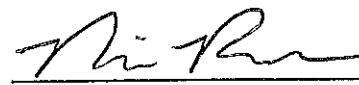
  
\_\_\_\_\_  
Signature  
Thomas Williams  
Printed Name

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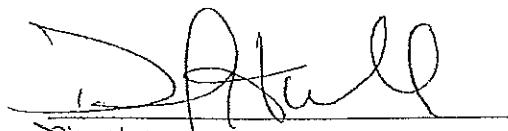
  
\_\_\_\_\_  
Signature  
Mark Morgan  
Printed Name

  
\_\_\_\_\_  
Signature  
Robert Romeo  
Printed Name

  
\_\_\_\_\_  
Signature  
Kevin Cooper  
Printed Name

  
\_\_\_\_\_  
Signature  
Mike Rusnak  
Printed Name

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\_\_\_\_\_  
Signature  
Daniel Hull  
\_\_\_\_\_  
Printed Name

**EXHIBIT 2**

**CONDITIONS OF EMPLOYMENT**

**CONTRACT**



CITY OF TEXAS CITY, TEXAS  
FIRE DEPARTMENT \* OFFICE: (409) 643-5700 \* FAX: (409) 643-5719

THE STATE OF TEXAS §  
COUNTY OF GALVESTON §

## **CONDITIONS OF EMPLOYMENT AGREEMENT**

WHEREAS, the City of Texas City seeks to obtain the best possible candidates for employment within the Texas City Fire Department; and

WHEREAS, to obtain the best possible employees, the Texas City Fire Department requires applicants to have and maintain certain minimum qualifications, training, and certifications; and

WHEREAS, the City requires every new probationary civil service employee in the Texas City Fire Department to agree to various conditions and qualifications of employment for the duration of the employee's tenure with the City; and

**NOW THEREFORE**, the City of Texas City and employee agree as follows:

I, THE UNDERSIGNED, AN  
APPLICANT/PROBATIONARY EMPLOYEE FOR THE CITY OF TEXAS CITY-FIRE DEPARTMENT,  
IN CONSIDERATION FOR EMPLOYMENT WITH THE CITY OF TEXAS CITY, DO UNDERSTAND  
AND VOLUNTARILY AGREE, AS A CONDITION OF INITIAL AND CONTINUED EMPLOYMENT,  
TO THE FOLLOWING CONDITIONS OF EMPLOYMENT.

2 RMT Certifications. The Texas City Fire Department provides emergency medical service for the citizens.

(a). Basic Certification. The City of Texas City desires that each applicant and employee already be EMT basic certified. However, to obtain the best possible employee, the City may hire a desirable applicant who does not yet have said certification, provided the applicant agrees to obtain the certification within the timeframe specified by the Fire Chief. Therefore, as a condition of my initial and continued employment, and as a Civil Service employee hired after January 1, 2001, I agree I am EMT (Emergency Medical Technician) certified at the basic level or I agree to attend EMT (Emergency Medical Technician) training and become certified at the basic level before the end of my probationary period.

(b). Intermediate and/or Paramedic Certification. The City of Texas City desires that each applicant and employee already be EMT certified at the Intermediate and/or Paramedic level. However, to obtain the best possible employee, the City may hire a desirable applicant who does not yet have said certification, provided the applicant agrees to obtain the certification within the timeframe specified by the Fire Chief. Only those new employees and/or applicants for employment who take and successfully pass the HOBET Health Occupational Basic Entrance Test, COMPASS Test, or similar placement test specific to Para medicine and/or Paramedic certification in advance of employment shall be required to become Paramedic certified during the course of their employment. Therefore, as a condition of my initial and continued employment, and as a Civil Service employee hired after December 1, 2007, I agree I am EMT (Emergency Medical Technician) certified at the intermediate and/or paramedic level or I agree to attend EMT (Emergency Medical Technician) training and become certified at the intermediate and/or paramedic level within the timeframe specified by the Fire Chief as specified herein.

(c). Future Requirements. Upon completing the appropriate emergency medical training and receiving State Certification, I acknowledge that I am subject to being detailed and assigned to the emergency medical services to include ambulance activity. Upon receiving State Certification, I agree to comply with and fulfill all



CITY OF TEXAS CITY, TEXAS  
FIRE DEPARTMENT \* OFFICE: (409) 643-5700 \* FAX: 409) 643-5719

existing and future requirements of the Texas State Department of Health Services to maintain my level of certification. Furthermore, once I obtain my basic EMT and Paramedic levels of certification, I agree to comply with and fulfill all existing and future requirements of the Texas City Fire Department and/or Medical Director.

It is understood that if I fail to satisfactorily complete the EMT Basic, Intermediate, or Paramedic training and qualify for State Certification or if I fail to maintain any and all required certifications at a level established by the Department, or if I fail to comply with and fulfill all existing and future requirements of the Texas City Fire Department, Texas State Department of Health Services and/or Medical Director providing Medical Control for the City of Texas City Fire Department, I shall be in breach of this agreement and, by my signature below, I agree to automatic resignation and forfeiture of my position with the City of Texas City in this event.

It is understood that all continuing education and/or annual training, attended voluntarily on off-duty time, to maintain present certification or to attain a higher level of certification is non-compensable under federal and state law, and that by my signature below acknowledges that I will voluntarily attend such training, as required to maintain my certification or attain a higher level of certification.

3. Outside Employment. I recognize that the fire service is a physically and mentally challenging job requiring that I come to work in top physical and mental shape. Outside employment may have a detrimental effect on my physical condition and mental acumen. As a Civil Service employee hired after January 1, 2001, I acknowledge that I am prohibited from engaging in outside employment, including self-employment, unless specifically approved by the Fire Chief prior to commencement. It is further understood that the criteria used by the Department when considering requests for outside employment shall be determined solely by the Department and shall be subject to change at any time. The criteria shall include, at a minimum, employee performance evaluations, disciplinary actions, attendance, sick leave usage, lost time injuries, safety record, the type of outside work to be performed, hours of work, workers compensation coverage, sick leave and medical insurance coverage, and possible conflicts of interest. It is understood that I must obtain approval before commencing in any form of employment outside of the Department and each year thereafter as established by Department policy. Further, I understand that all decisions rendered by the Fire Chief relevant to the review, approval, or denial of requests to engage in employment outside of the Department by Civil Service employees shall not be subject to review or appeal.

I understand that if I fail to comply with and fulfill all existing and future requirements of the Texas City Fire Department regarding employment outside of the Department, I shall be in breach of this agreement and, by my signature below, I agree to automatic resignation and forfeiture of my position with the City of Texas City in this event.

4. Outside Fire Service and EMS Activities. I recognize that the fire service and EMS service is a physically and mentally challenging job requiring that I come to work in top physical and mental shape. Outside fire service and EMS activities may have a detrimental effect on my physical condition and mental acumen, and may be incompatible with my employment with the City. As a Civil Service employee hired after January 1, 2001, I acknowledge that I am prohibited from engaging in the provision of fire service or EMS activities, to include, but not limited to, fire suppression, fire prevention, fire investigation, fire education, hazardous materials, and emergency medical services, for any entity, public or private, with or without remuneration, unless specifically approved by the Fire Chief. Further, I understand that the criteria used by the Department when considering requests for fire service and EMS activities shall be determined solely by the Department and shall be subject to change at any time. The criteria shall include, at a minimum, employee performance evaluations, disciplinary actions, attendance, sick leave usage, lost time injuries, safety record, the type of fire service activities to be performed, hours of work, workers compensation coverage, sick leave and medical insurance coverage, and possible conflicts of interest. I understand that I must obtain approval before commencing in any form of fire service or EMS activities outside of the Department and each year thereafter as established by Department policy. It is further understood that all decisions rendered by the Fire Chief relevant to the review, approval, or denial of requests to engage in fire service or EMS activities outside of the Department by Civil Service employees shall not be subject to review or appeal.



CITY OF TEXAS CITY, TEXAS

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Further, I understand that if I fail to comply with and fulfill all existing and future requirements of the Texas City Fire Department regarding fire service or EMS activities outside of the Department, I shall be in breach of this agreement and, by my signature below, I agree to automatic resignation and forfeiture of my position with the City of Texas City in this event.

5. Drivers License. The City of Texas City desires that each applicant and employee already have a Class B, DOT Commercial Texas Drivers License. However, to obtain the best possible employee, the City may hire a desirable applicant who does not yet have said license, provided the applicant agrees to obtain the license within the timeframe specified by the Fire Chief. Therefore, as a condition of my initial and continued employment, I agree to obtain a Class B, DOT Commercial Texas Drivers License within one (1) year following employment. I understand that any time spent studying, practicing to drive, and taking the State examination is non-compensable under federal and state law, and shall be on my non-work time. I also understand that as a condition of initial and continued employment, and as a Civil Service employee hired after January 1, 2001, I shall be required to obtain a Class A, DOT Commercial Drivers License at some time during my employment with the Department. Furthermore, as an employee obtaining a Texas Drivers License as required by the Department, I shall comply with and fulfill all existing and future requirements of the Texas City Fire Department and State of Texas.

I understand that failure to obtain and maintain a Texas Drivers License at a level required by the Department shall constitute a breach of this agreement and, by my signature below, I agree to automatic resignation and forfeiture of my position with the City of Texas City in this event.

6. Drug and Alcohol Abuse Policy. I understand and acknowledge that I have received and read the City of Texas City's Drug and Alcohol Abuse Policy and agree to comply with all of its requirements and subsequent modifications, including the requirements related to biological testing. I further understand that I may not be compelled to provide biological specimens for drug or alcohol testing, however, refusal to do so can result in my termination from employment, or termination of the pre-employment process. I hereby agree and consent to give biological specimens whenever requested to do so by the City. It is understood and agreed that the City shall make available Rehabilitation and Employee Assistance for those seeking such intervention in advance of a positive drug and/or alcohol test in violation of this policy and following a positive drug and/or alcohol test for first time offenders in accordance with the Drug and Alcohol Abuse Policy.

I understand that failure to comply with and fulfill all requirements and future requirements of the Texas City Fire Department related to the City Drug and Alcohol Abuse Policy, including the requirements related to biological testing, shall constitute a breach of this agreement and, by my signature below, I agree to automatic resignation and forfeiture of my position with the City of Texas City in this event.

7. Tobacco-free. I agree to be tobacco free upon appointment and throughout the length of my service to the Texas City Fire Department.

It is understood that the use of tobacco or tobacco products at any time during my length of service with the Texas City Fire Department is prohibited and shall constitute a breach of this agreement and, by my signature below, I agree to automatic resignation and forfeiture of my position with the City of Texas City in this event.

8. Wellness/Fitness. I recognize that the fire service is a physically challenging job requiring that I be in top physical condition. I acknowledge that I am required to participate in, and maintain the standards established by the Texas City Fire Department Wellness-Fitness program. Participation in this program shall include, but is not limited to, medical fitness, physical fitness, emotional fitness, and rehabilitation when indicated or mandated by the Department. Further, I understand that I am to cooperate fully with the City in the review or investigation of sick leave usage, injury leave, and wellness-fitness standards and maintenance to include, but not limited to, the release and production upon request of all medical records, medical test results, and other medical records if specifically related to the review or investigation of sick leave or injury leave usage in question, regardless of origin, repository, or proprietary nature throughout their length of service to the Texas City Fire Department.



CITY OF TEXAS CITY, TEXAS

FIRE DEPARTMENT \* OFFICE: (409) 643-5700 \* FAX: 409) 643-5719

I understand that failure to comply with and fulfill all requirements of the Texas City Fire Department Wellness-Fitness program as established by Department policy shall constitute a breach of this agreement and, by my signature below, I agree to automatic resignation and forfeiture of my position with the City of Texas City in this event.

I understand that failure to comply with and fulfill all requirements of the Texas City Fire Department related to the review or investigation of sick leave, injury leave, or wellness-fitness standards and maintenance shall constitute a breach of this agreement and, by my signature below, I agree to automatic resignation and forfeiture of my position with the City of Texas City in this event.

9. Occupational Qualifications. As a condition of initial and continued employment I agree to obtain and maintain all current and future occupational qualifications, as established solely by the Department. These include, but are not limited to, educational requirements set by the Texas Commission on Fire Protection or other state and/or federal agencies in order to obtain or retain various certifications; higher educational requirements; training, seminars, conferences, or continuing education deemed necessary by the employer; special skills, certificates, or abilities. As a condition of initial and continued employment, I further understand that I shall obtain prior to the completion of my probationary period:

- Hazardous Materials Technician certification,
- Water Rescue certification,
- High Angle and Confined Space certification, and
- Cardiopulmonary Resuscitation Instructor certification
- Methods of Teaching Certification.

I understand that any continuing education, training and/or travel necessary in order to obtain and retain such certifications shall be considered voluntary on my part, and shall not be considered compensable if attended or occurring on non-work time. The Fire Chief may at his/her discretion extend the deadline for completion.

As a condition of initial and continued employment I understand and acknowledge that I may be required at some time during my service with the Department to be certified as:

- Fire Instructor
- Fire Inspector
- Fire Investigator
- Arson Investigator
- Peace Officer

by the Texas Commission on Fire Protection or the Texas Commission on Law Enforcement and Officers Standard's and Education. I understand that any training necessary in order to obtain and retain the certifications above shall be considered voluntary, and shall not be considered compensable if attended on non-work time.

It is understood that failure to satisfactorily complete any instruction or training required by the Department or to obtain and maintain any certificate, license, or vocational proficiency required by the Department during my length of service with the Department shall constitute a breach of this agreement and, by my signature below, I agree to automatic resignation and forfeiture of my position with the City of Texas City in this event.

10. Criminal Offenses. As a condition of initial and continued employment I acknowledge and agree that I must report to the Department (Fire Chief) within twenty four (24) hours of occurrence any arrests, detainments, or charges filed by appropriate law enforcement agencies for all felonies and/or misdemeanors to include DWI offenses. Final disposition of all charges filed and/or adjudicated by the courts shall be reported to the Department within twenty four (24) hours. This section does not pertain to minor Class C traffic offenses unless they result in incarceration and/or detainment by a law enforcement agency.



CITY OF TEXAS CITY, TEXAS

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It is understood that failure to comply with this provision at any time during the length of service with the Texas City Fire Department is prohibited and shall constitute a breach of this agreement and, by my signature below, I agree to automatic resignation and forfeiture of my position with the City of Texas City in this event.

11. Degree Program from Accredited College. The City of Texas City desires that each applicant and employee already have obtained an Associate's or Bachelor's Degree from an Accredited College. However, to obtain the best possible employee, the City may hire a desirable applicant who does not yet have an Associates or Bachelor's Degree, provided the applicant agrees to obtain such degree(s) within the timeframe specified by the Fire Chief. Therefore, as a condition of initial and continued employment I understand and agree that I shall obtain, from an Accredited College, an Associates Degree in Fire Protection Technologies, Fire Administration, Business Administration or other degree program which has been pre-approved by and authorized by the Office of the Fire Chief. I understand that the Associates Degree must be obtained within six (6) years of employment.

As a condition of initial and continued employment I understand and acknowledge that I may be required by the Fire Chief at some time during my service with the Department to obtain a Bachelor's Degree from an Accredited College in a program that has been pre-approved by and authorized by the Office of the Fire Chief. The fire chief shall establish a time limit in which I shall obtain the required bachelors degree.

It is understood that any time spent off-duty to study for or attend any course(s), class(s) or training involved in obtaining an Associates Degree, or a Bachelor's Degree, is voluntarily and is non-compensable under federal and state law, and that by my signature below acknowledges that I shall voluntarily attend such course(s), class(s) or training, as required to obtain either degree.

It is further understood that failure to comply with this provision shall constitute a breach of this agreement and, by my signature below, I agree to automatic resignation and forfeiture of my position with the City of Texas City in this event.

12. Liquidated Damages and Attorney's Fees. I acknowledge that the City of Texas City will expend funds to train and educate me, and enable me to obtain certifications and licenses. I acknowledge that each Civil Service employee hired after January 1, 2005, who voluntarily leaves the employment of the Texas City Fire Department within thirty-six (36) months following the effective day of employment {may} be required at the sole discretion of the Fire Chief, as liquidated damages, to reimburse the City of Texas City for those costs incurred by the City for training, education, or certifications obtained during my employment. Costs are defined as, but not limited to tuition, registration fees, testing and certification fees, books, materials and supplies, travel, lodging, and per diem payments. The criteria used by the Department to determine when, and which costs are considered reimbursable by the employee to the employer, shall be established solely by the Department and may be subject to change. I understand and agree that all decisions rendered by the Fire Chief relevant to the reimbursement of costs incurred by the employer for employees voluntarily separating from their employment with the Texas City Fire Department as described herein, shall be final and binding, and shall not be subject to review or appeal to the grievance procedures.

I agree that my failure to reimburse the City upon demand at the time of my separation of employment will result in forfeiture of all monies otherwise payable to myself upon my separation from the employment of the Texas City Fire Department by the City of Texas City in an amount equal to the costs incurred as delineated and determined solely by the City. Further, I understand the City may, at its sole discretion, elect to pursue other remedies provided by law for collection of costs incurred by myself which are not fully reimbursed by me upon separation to include litigation. I acknowledge that if the City is forced to initiate litigation against me, and prevails, that I shall be responsible for the payment of the City's attorney fees necessitated by the filing of the litigation.

13. Other remedies not precluded. I fully understand the above requirements, and I agree to comply fully with each requirement. This instrument is executed to acknowledge my understanding and acceptance of these conditions of employment. I agree that failure to comply with and fulfill all aforementioned requirements of the City of Texas City Fire Department during my length of service with the Department constitutes a breach of this agreement and automatic resignation and forfeiture of my position with the City of Texas City. I understand that if I



CITY OF TEXAS CITY, TEXAS

FIRE DEPARTMENT \* OFFICE: (409) 643-5700 \* FAX: (409) 643-5719

forfeit my position for violating any of the aforementioned requirements, said action is not disciplinary in nature, but is solely on account of my not meeting all job requirements.

It is understood that automatic resignations for any breach of the terms and conditions of this Conditions of Employment Agreement are voluntary in nature and are considered as non-disciplinary resignations, and there is no right of appeal before the Texas City local civil service commission, hearing examiner, a court of law or through grievance within the collective bargaining agreement.

14. Joint Severability. Any invalidity of any part of this Agreement will not cause the remaining parts to be invalid.

15. Venue. This Agreement is governed by the laws of the State of Texas, and venue for any legal proceeding relating to this Agreement shall lie in Galveston County, Texas.

THE ABOVE REQUIREMENTS HAVE BEEN FULLY DISCLOSED TO ME DURING THE PRE-HIRE AND/OR PROBATIONARY PERIOD, AND I UNDERSTAND THAT MY AGREEMENT TO MEET THE REQUIREMENTS IS A PRE-CONDITION TO MY EMPLOYMENT AND CONTINUED EMPLOYMENT WITH THE CITY OF TEXAS CITY-FIRE DEPARTMENT.

Signed this the \_\_\_\_\_ day of \_\_\_\_\_ A. D. 20\_\_\_\_\_

Signature \_\_\_\_\_

Printed Name \_\_\_\_\_

Address \_\_\_\_\_  
\_\_\_\_\_

Telephone \_\_\_\_\_

THE STATE OF TEXAS                    \$  
    \$  
COUNTY OF GALVESTON                \$

BEFORE ME, the undersigned authority, a Notary Public in and for said County and State, on this day personally appeared \_\_\_\_\_, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she (strike one) executed the same for the purposes and consideration therein expressed.

Notary Public in and for Galveston County, Texas

My Commission Expires: \_\_\_\_\_